



California Fair Political Practices Commission

November 20, 1989

Lance H. Olson
OLSON, CONNELLY, HAGEL & FONG
300 Capitol Mall, Suite 350
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-89-600

Dear Mr. Olson:

This is in response to your request for advice on behalf of Assemblymember Jack O'Connell concerning his duties under the Political Reform Act (the "Act").¹

QUESTION

May Assemblymember O'Connell's committee formed to oppose a recall effort either donate or sell mailing lists of contributors and/or constituents to his committee for re-election to the Assembly?

CONCLUSION

Assemblymember O'Connell's recall committee may not donate the mailing lists to his Assembly re-election committee. However, his recall committee may sell the mailing lists to his Assembly re-election committee for their fair market value.

FACTS

Mr. O'Connell is a member of the State Assembly and has established a committee ("Assembly committee") to support his re-election to that office in 1990. Mr. O'Connell is also the subject of a recall effort within his Assembly district and has formed a committee to oppose the recall ("recall committee").

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

In the course of opposing the recall effort, Mr. O'Connell's recall committee will be receiving contributions in excess of the contribution limitations of the Act. The recall committee will be expending these contributions to arrange meetings with and make mailings to constituents in Mr. O'Connell's district.

As a result of these efforts, the recall committee will accumulate mailing lists of Mr. O'Connell's contributors and/or constituents.

DISCUSSION

In the Roberti Advice Letter, No. A-89-358 (copy enclosed), the Commission staff concluded that recall elections were ballot measures under Section 82043 of the Act. We further concluded that the Act's contribution limits did not apply to recall elections. (See Citizens Against Rent Control v. City of Berkeley (1981) 454 U.S. 290.) Therefore, Assemblymember O'Connell's recall committee may properly receive contributions in excess of the Act's contribution limits.

By contrast, Assemblymember O'Connell's campaign for re-election to the Assembly in 1990 is an election to office and not a ballot measure. Therefore, contributions to his Assembly committee are subject to the Act's contribution limits. (Sections 85301 and 85303.)

Sections 85301 and 85303 establish the maximum amount that a contributor can give to a candidate in a fiscal year. Section 85201 requires that candidates deposit contributions into a separate bank account for each office they seek. Section 85202 prohibits the use of contributions for anything other than expenses associated with the candidate's election to that office or expenses associated with holding that office. Finally, Section 85304 prohibits a candidate from transferring contributions between his or her own separate committees.

Permitting the donation of funds or assets, such as voter mailing lists, from Assemblymember O'Connell's recall committee to his Assembly committee would undermine and potentially violate these requirements. Foremost, there is the potential that the recall committee could be used to funnel funds or assets well in excess of the Act's contribution limits to the Assembly committee. While we do not suggest that this is Assemblymember O'Connell's intention, it is a risk that will be avoided by compliance with Sections 85201, 85202 and 85304. This will ensure that contributions made to the recall committee and assets acquired with those contributions are not commingled with contributions and assets accumulated by the Assembly committee.

In making this analysis, we are cognizant of the May 19, 1989 preliminary injunction (copy enclosed) issued by the court in Service Employees International Union, et al. v. Fair Political

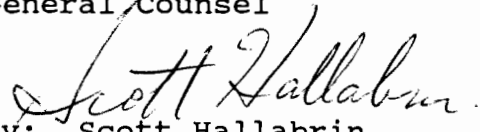
Practices Commission, U.S. District Court, Eastern District of California, Case No. CIVS 89-0433 LKK-JFM. Among other things, this order enjoined the Commission from enforcing Sections 85200, 85201, 85202 and 85304 to the extent that these provisions prohibited candidates from transferring contributions between their separate committees. The preliminary injunction applies only to transfers between a candidate's election committees and does not apply to transfers between his or her election committees and ballot measure committees.

You have asked in the alternative whether Assemblymember O'Connell's recall committee can sell contributor/constituent mailing lists to his Assembly committee. Under the Act, Assemblymember O'Connell's recall committee and Assembly committee are separate entities for the purposes of receiving contributions. Therefore, any transfer of funds or assets from one committee to the other could be considered a contribution. However, Section 82015, which defines contribution, makes clear that the transfer of property, such as these mailing lists, for full and adequate consideration is not a contribution. Accordingly, Assemblymember O'Connell's recall committee may sell these lists to his Assembly committee so long as the fair market value is charged for them.

Should you have any questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Scott Hallabrin
Counsel, Legal Division

KED:SH:ld

Enclosure

Law Offices of
OLSON, CONNELLY, HAGEL & FONG

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September 25, 1989

Kathryn Donovan
General Counsel
Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 98504-0807

RE: Jack O'Connell

Dear Ms. Donovan:

This office represents Assemblyman Jack O'Connell and his two campaign committees, Jack O'Connell for Assembly and Committee to Retain Assemblyman Jack O'Connell. On behalf of our clients we are seeking advice pursuant to the campaign provisions of the Political Reform Act.

Mr. O'Connell has established a committee to support his re-election in 1990 to the State Assembly. This committee is known as Jack O'Connell for Assembly. In addition, Mr. O'Connell is the subject of a recall effort within his present assembly district. In order to oppose the recall effort, Mr. O'Connell has established a second committee called Committee to Retain Assemblyman Jack O'Connell.

In the course of opposing the recall effort, Mr. O'Connell's recall committee will be receiving contributions, some of which may be in excess of the limitations contained in chapter 5 of the Political Reform Act. Also as part of the effort to oppose the recall effort, Mr. O'Connell will be communicating with constituents in his district through meetings and mailings which will be paid for by the recall committee.

As a natural outgrowth of those efforts, lists of supporters and/or constituents will be maintained. At the conclusion of the recall effort Mr. O'Connell's committee will be in the possession of certain assets, including lists of contributors and/or constituents with whom he has had contact.

Mr. O'Connell wishes to know whether he may donate those lists to his committee established for purposes for re-electing him to the State Assembly in 1990.

LANCE H. OLSON
BRUCE J. HAGEL
LEROY Y. FONG
ROBERT E. LEIDIGH

OF COUNSEL
LLOYD G. CONNELLY, Member
California State Legislature

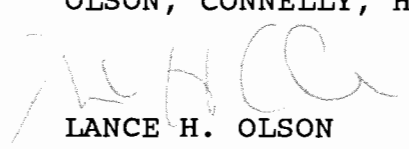
Kathryn Donovan
September 25, 1989
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As an alternative question, Mr. O'Connell would also like to know whether he may sell the lists of the recall committee to the re-election committee at fair market value and transfer funds from the election committee to the recall committee to do so.

Thank you for your prompt attention in this matter.

Very truly yours,

OLSON, CONNELLY, HAGEL & FONG



LANCE H. OLSON

LHO/jph
cc: Jack O'Connell



California Fair Political Practices Commission

October 20, 1989

Lance H. Olson
Olson, Connelly, Hagel & Fong
300 Capitol Mall, Suite 350
Sacramento, CA 95814

Re: Letter No. 89-600

Dear Mr. Olson:

Your letter requesting advice under the Political Reform Act was received on October 19, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh